

AMENDED IN ASSEMBLY JUNE 19, 2015

AMENDED IN ASSEMBLY JUNE 3, 2015

AMENDED IN SENATE APRIL 14, 2015

## SENATE BILL

**No. 414**

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### **Introduced by Senator Jackson**

(Principal coauthor: Assembly Member Williams)

February 25, 2015

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An act to amend Sections 8670.8.5, 8670.12, 8670.13, and 8670.67.5 of, and to add Sections 8670.11, 8670.12.1, 8670.13.3, 8670.31.5, and 8670.43 to, the Government Code, relating to oil spill response.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 414, as amended, Jackson. Oil spill response.

(1) The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act generally requires the administrator for oil spill response, acting at the direction of the Governor, to implement activities relating to oil spill response, including emergency drills and preparedness, and oil spill containment and cleanup. The act authorizes the administrator to use volunteer workers in response, containment, restoration, wildlife rehabilitation, and cleanup efforts for oil spills in waters of the state. Existing law requires the administrator to evaluate the feasibility of using commercial fishermen and other mariners for oil spill containment and cleanup. *Existing law authorizes oil spill response organizations to apply to the administrator for a rating for that organization's response capabilities.*

This bill would require the administrator, in cooperation with the United States Coast Guard, to conduct an independent vessel traffic assessment for ~~the San Francisco Bay~~ *all deepwater ports* that may

inform an area rescue towing plan for the ~~3~~ approaches to the ~~Golden Gate, ports~~ and to establish a schedule of drills and exercises that are required under the federal Salvage and Marine Firefighting regulations. The bill would require the administrator to develop and implement ~~a program~~ *regulations for oil spill response organizations* to allow immediate response to an oil spill by contracted fishing vessels and ~~fishing crews. The bill would require the administrator, by regulation, to require oil spill response organizations to have specified oil spill response equipment. The bill would require the administrator, on or before July 1, 2016, to submit to the Legislature a report assessing the best available technology and equipment *based on the estimated system recovery potential* for oil spill prevention and response.~~

(2) The act requires operators of specified vessels and facilities to submit to the administrator an oil spill contingency plan to determine whether the plan meets applicable requirements. The act requires an operator to resubmit the plan to the administrator every 5 years.

This bill would require the administrator to adopt, by regulation, methodology to rate the oil spill prevention and response equipment listed in the plan to maintain the best achievable protection standards through the use of equipment that is the best available technology. *The bill would require the administrator, every 5 years, to provide to the Legislature a report that justifies the regulations and methodology.*

(3) The act requires the administrator to license oil spill cleanup agents for use in response to oil spills. The federal Coastal Zone Management Act of 1972 (federal act) requires federal agency activities to be carried out in a manner that is consistent, to the maximum extent practicable, with an approved state management plan. Existing federal law authorizes the California Coastal Commission, the designated state agency, to conduct federal consistency review to ensure federal agency activities are consistent with the California Coastal Management Program.

This bill would prohibit the use of *chemical* oil spill cleanup agents in the waters of the state ~~unless 2 specified conditions occur. The bill would require the California Coastal Commission to conduct a federal consistency review for federal policies authorizing the use of oil spill cleanup agents in the coastal waters of the state.~~

~~(4) Existing law imposes an oil spill prevention and administration fee in an amount determined by the administrator to be sufficient to implement oil spill prevention activities. The fee is deposited into the Oil Spill Prevention and Administration Fund in the State Treasury and~~

~~moneys in the fund are available, upon appropriation by the Legislature, for, among other purposes, the implementation, installation, and maintenance of emergency programs, equipment, and facilities to respond to, contain, and clean up oil spills, and to ensure that those operations will be carried out as intended.~~

~~This bill would require the administrator, upon appropriation of funds for that purpose, to purchase specified oil spill response equipment, including specified equipment to be stationed on the Santa Barbara coastline.~~

~~(5)~~

(4) The act makes a person who causes or permits a spill or inland spill strictly liable for specified penalties for the spill on a per-gallon-released basis. The act provides that the amount of penalty is reduced by the amount of released oil that is recovered and properly disposed of.

This bill would provide that the above reduction in the penalty for spills, including inland spills, of greater than 500 gallons, is only applicable to the amount of oil recovered and properly disposed of within 2 weeks of the start of the spill.

~~(6) This bill would make legislative findings and declarations as to the necessity of a special statute for the San Francisco Bay and for the Santa Barbara coastline.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 8670.8.5 of the Government Code is  
2 amended to read:

3 8670.8.5. (a) The administrator may use volunteer workers in  
4 response, containment, restoration, wildlife rehabilitation, and  
5 cleanup efforts for oil spills in waters of the state. The volunteers  
6 shall be deemed employees of the state for the purpose of workers'  
7 compensation under Article 2 (commencing with Section 3350)  
8 of Chapter 2 of Part 1 of Division 4 of the Labor Code. Any  
9 payments for workers' compensation pursuant to this section shall  
10 be made from the Oil Spill Response Trust Fund created pursuant  
11 to Section 8670.46.

12 (b) (1) The administrator shall develop and implement—a  
13 ~~program~~ regulations for oil spill response organizations to allow

1 immediate response to an oil spill by contracted fishing vessels  
2 and *fishing* crews and that shall provide for regularly scheduled  
3 emergency drills and training in areas that include the following:

4 (A) Shoreline protection.

5 (B) Towing boom and skimmers.

6 (C) Working with minibarges.

7 (D) Loading and unloading equipment from response barges.

8 (2) In developing the ~~program~~, *regulations*, the administrator  
9 shall consider the fishing vessel training program funded and  
10 maintained by Alyeska's Ship Escort/Response Vessel ~~System~~.  
11 *System, with regard to training, liability, insurance, compensation,*  
12 *and post response vessel cleanup.*

13 SEC. 2. Section 8670.11 is added to the Government Code, to  
14 read:

15 8670.11. In addition to Section 8670.10, the administrator, in  
16 cooperation with the United States Coast Guard, shall establish a  
17 schedule of drills and exercises required pursuant to Section  
18 155.4052 of Title 33 of the Code of Federal Regulations. The  
19 administrator shall make publicly available the established  
20 schedule.

21 SEC. 3. Section 8670.12 of the Government Code is amended  
22 to read:

23 8670.12. (a) The administrator shall conduct studies and  
24 evaluations necessary for improving oil spill response, containment,  
25 and cleanup and oil spill wildlife rehabilitation in waters of the  
26 state and oil transportation systems. The administrator may expend  
27 moneys from the Oil Spill Prevention and Administration Fund  
28 created pursuant to Section 8670.38, enter into consultation  
29 agreements, and acquire necessary equipment and services for the  
30 purpose of carrying out these studies and evaluations.

31 (b) The administrator shall study the use and effects of  
32 dispersants, incineration, bioremediation, and any other methods  
33 used to respond to a spill. The study shall periodically be updated  
34 to ensure the best achievable protection from the use of those  
35 methods. Based upon substantial evidence in the record, the  
36 administrator may determine in individual cases that best  
37 achievable protection is provided by establishing requirements  
38 that provide the greatest degree of protection achievable without  
39 imposing costs that significantly outweigh the incremental

1 protection that would otherwise be provided. The studies shall do  
2 all of the following:

3 (1) Evaluate the effectiveness of dispersants and other ~~chemical~~  
4 *chemical, bioremediation, and biological* agents in oil spill  
5 response under varying environmental conditions.

6 (2) Evaluate potential adverse impacts on the environment and  
7 public health including, but not limited to, adverse toxic impacts  
8 on water quality, fisheries, and wildlife with consideration to  
9 bioaccumulation and synergistic impacts, and the potential for  
10 human exposure, including skin contact and consumption of  
11 contaminated seafood.

12 (3) Recommend appropriate uses and limitations on the use of  
13 dispersants and other ~~chemical~~ *chemical, bioremediation, and*  
14 *biological* agents to ensure they are used only in situations where  
15 the administrator determines they are effective and safe.

16 (c) The studies shall be performed in conjunction with any  
17 studies performed by federal, state, and international entities. The  
18 administrator may enter into contracts for the studies.

19 SEC. 4. Section 8670.12.1 is added to the Government Code,  
20 to read:

21 8670.12.1. The administrator, in cooperation with the United  
22 States Coast Guard, shall conduct an independent vessel traffic  
23 risk assessment for the ~~San Francisco Bay that may inform an area~~  
24 ~~rescue towing plan for the three approaches to the Golden Gate.~~  
25 *all deepwater ports that may inform an area rescue towing plan*  
26 *for the approaches to the ports.*

27 SEC. 5. Section 8670.13 of the Government Code is amended  
28 to read:

29 8670.13. (a) The administrator shall periodically evaluate the  
30 feasibility of requiring new technologies to aid prevention,  
31 response, containment, ~~cleanup~~ *cleanup*, and wildlife rehabilitation.

32 (b) (1) On or before July 1, 2016, the administrator shall submit  
33 a report to the Legislature, pursuant to Section 9795, assessing the  
34 best available technology and equipment *based on the estimated*  
35 *system recovery potential* for oil spill prevention and response,  
36 including, but not limited to, prevention and response tugs, tractor  
37 tugs, salve and marine firefighting tugs, oil spill skimmers and  
38 barges, and protective in-water boom equipment.

39 (2) In conducting the assessment, the administrator shall consult  
40 the peer-reviewed research performed by the Prince William Sound

1 Regional Citizens' Advisory ~~Council~~. *Council as well as estimated*  
2 *system recovery potential research done at Genwest Systems, Inc.,*  
3 *and Spiltec.*

4 (3) Pursuant to Section 10231.5, this subdivision is inoperative  
5 on July 1, 2020.

6 (c) Based on the report prepared pursuant to subdivision (b),  
7 the administrator shall establish standards for best achievable  
8 technologies for oil spill prevention and ~~response~~. *response no*  
9 *later than July 1, 2017.*

10 SEC. 6. Section 8670.13.3 is added to the Government Code,  
11 to read:

12 8670.13.3. (a) ~~(1) (A)~~ Notwithstanding any law, *chemical*  
13 *oil spill cleanup agents shall not be used in response to an oil spill*  
14 *within the waters of the state unless both of the following occur:*  
15 *state.*

16 (i) ~~The administrator establishes, pursuant to Section 8670.13,~~  
17 ~~standards for best achievable technologies for oil spill prevention~~  
18 ~~and response.~~

19 (ii) ~~The United States Environmental Protection Agency adopts~~  
20 ~~amendments to subpart J of the National Oil and Hazardous~~  
21 ~~Substances Pollution Contingency Plan (40 C.F.R. Sec. 300.900~~  
22 ~~et. seq.) governing the use of oil spill cleanup agents, other~~  
23 ~~chemical and biological agents, and other oil spill mitigating~~  
24 ~~substances in responding to oil discharges into water, as set forth~~  
25 ~~in Docket ID No. EPA-HQ-OPA-2006-0090, and the administrator~~  
26 ~~adopts regulations consistent with those federal amendments.~~

27 ~~(B) Upon the occurrence of clauses (i) and (ii), the administrator~~  
28 ~~shall notify the Secretary of State of those occurrences and shall~~  
29 ~~post on the Office of Oil Spill Prevention and Response's Internet~~  
30 ~~Web site a notice of those occurrences.~~

31 ~~(2)~~

32 (b) For purposes of this section, "waters of the state" means any  
33 surface water, including saline water, within the boundary of the  
34 state.

35 ~~(b) The California Coastal Commission, pursuant to Section~~  
36 ~~307 of the federal Coastal Zone Management Act (16 U.S.C. Sec.~~  
37 ~~1456) and the California Coastal Act (Division 20 (commencing~~  
38 ~~with Section 30000) of the Public Resources Code), shall conduct~~  
39 ~~a federal consistency review for federal policy authorizing the use~~  
40 ~~of oil spill cleanup agents in the coastal waters of California.~~

SEC. 7. Section 8670.31.5 is added to the Government Code, to read:

8670.31.5. ~~The~~ *(a) For offshore oil spill response, the administrator shall, by regulation, establish a methodology for rating equipment, such as oil containment, skimming, storage, and oil/water separation technologies, listed in an oil spill contingency plan to maintain the best achievable protection standards through the use of equipment that is the best available technology.*

*(b) The administrator shall provide a report to the Legislature every five years that justifies the regulations adopted and methodologies established pursuant to subdivision (a). The report to the Legislature shall be delivered as provided in Section 9795 of the Government Code.*

SEC. 8. Section 8670.43 is added to the Government Code, to read:

8670.43. Pursuant to paragraph (4) of subdivision (e) of Section 8670.40, ~~the administrator, upon appropriation of funds for that purpose, shall do both of the following:~~ *administrator shall require, by regulation, all oil spill response organizations to have in their response fleets both of the following:*

(a) ~~Purchase at~~ *At least two new-generation, high-efficiency disc skimmers to be stationed on the Santa Barbara coastline. skimmers. This equipment shall include high-efficiency skimming NOFI-current busters, Current Busters, or their equivalent, and Elastec grooved disc skimmers, or their equivalent.*

(b) ~~Purchase a~~ *A purpose-built, prepositioned prevention and response tug with appropriate size, bollard pull, horsepower, propulsion, seakeeping, and maneuverability to meet Det Norske Veritas criteria for emergency towing.*

SEC. 9. Section 8670.67.5 of the Government Code is amended to read:

8670.67.5. (a) Regardless of intent or negligence, any person who causes or permits a spill shall be strictly liable civilly in accordance with subdivision (b) or (c).

(b) A penalty may be administratively imposed by the administrator in accordance with Section 8670.68 in an amount not to exceed twenty dollars (\$20) per gallon for a spill. Except as provided in subdivision (d), the amount of the penalty shall be reduced for every gallon of released oil that is recovered and properly disposed of in accordance with applicable law.

1 (c) Whenever the release of oil resulted from gross negligence  
2 or reckless conduct, the administrator shall, in accordance with  
3 Section 8670.68, impose a penalty in an amount not to exceed  
4 sixty dollars (\$60) per gallon for a spill. Except as provided in  
5 subdivision (d), the amount of the penalty shall be reduced for  
6 every gallon of released oil that is recovered and properly disposed  
7 of in accordance with applicable law.

8 (d) (1) For a spill of greater than 500 gallons, the penalty  
9 assessed pursuant to subdivision (b) or (c) shall only be reduced  
10 for every gallon of released oil that is recovered and properly  
11 disposed of in accordance with applicable law within two weeks  
12 of the start of the spill.

13 (2) Notwithstanding Section 8670.69.7, any increase in the  
14 amount of a penalty assessed for an inland spill resulting from the  
15 operation of paragraph (1) shall be deposited in the Environmental  
16 Enhancement Fund pursuant to Section 8670.70.

17 (e) The administrator shall adopt regulations governing the  
18 method for determining the amount of oil that is cleaned up.

19 ~~SEC. 10.—In regard to provisions of this act related to the San~~  
20 ~~Francisco Bay or the Santa Barbara coastline, the Legislature finds~~  
21 ~~and declares that a special law is necessary and that a general law~~  
22 ~~cannot be made applicable within the meaning of Section 16 of~~  
23 ~~Article IV of the California Constitution because of the unique~~  
24 ~~maritime conditions in the San Francisco Bay that affect vessel~~  
25 ~~traffic and the operation of offshore oil drilling platforms near the~~  
26 ~~Santa Barbara coastline.~~